

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALTON LOREN SMITH,

Plaintiff,

v.

PIERCE COUNTY, *et al.*,

Defendants.

CASE NO. 3:23-CV-5061-DGE-DWC

ORDER DECLINING TO SERVE

Plaintiff Dalton Loren Smith, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's complaint under 28 U.S.C. § 1915A, the Court declines to serve Plaintiff's complaint but provides Plaintiff leave to file an amended pleading by March 24, 2023 to cure the deficiencies identified herein.

I. Background

Plaintiff, who is currently a convicted and sentenced state prisoner confined at the Pierce County Jail, asserts claims arising out of his criminal proceedings in Pierce County superior court. Dkt. 1 at 4–7. Plaintiff brings claims against Pierce County, as well as his defense counsel and the prosecuting attorney. His complaint alleges claims of ineffective assistance of counsel

1 and a due process violation for failing to secure his presence at an omnibus hearing in superior
 2 court. *Id.* As a result, he claims to have suffered emotional and mental stress and financial loss.
 3 *Id.* at 7. As relief, Plaintiff seeks monetary damages. *Id.* at 9.

4 **II. Discussion**

5 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
 6 complaints brought by prisoners seeking relief against a governmental entity or officer or
 7 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
 8 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
 9 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
 10 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
 11 152 F.3d 1193 (9th Cir. 1998).

12 To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
 13 violation of rights protected by the Constitution or created by federal statute, and (2) the
 14 violation was proximately caused by a person acting under color of state law. *See Crumpton v.*
 15 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
 16 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
 17 (1994).

18 To satisfy the second prong, a plaintiff must allege facts showing how individually
 19 named defendants caused, or personally participated in causing, the harm alleged in the
 20 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. Int’l Bus. Machines*
 21 *Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). A person subjects another to a deprivation of a
 22 constitutional right when committing an affirmative act, participating in another’s affirmative act,
 23 or omitting to perform an act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
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1 Cir. 1978). Sweeping conclusory allegations against an official are insufficient to state a claim for
 2 relief. *Leer*, 844 F.2d at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but
 3 must allege the defendant’s own conduct violated the plaintiff’s civil rights. *City of Canton, Ohio*
 4 *v. Harris*, 489 U.S. 378, 385–90 (1989).

5 **A. Municipal Liability**

6 Plaintiff names Pierce County as a defendant in this case. A municipality qualifies as a
 7 “person” who may be held liable under § 1983. *See Monell v. Dep’t of Soc. Servs. of City of New*
 8 *York*, 436 U.S. 658, 690 (1978).

9 To set forth a claim against a municipality, a plaintiff must show the defendant’s
 10 employees or agents acted through an official custom, pattern, or policy permitting deliberate
 11 indifference to, or violating, the plaintiff’s civil rights, or that the entity ratified the unlawful
 12 conduct. *Monell*, 436 U.S. at 690–91. A plaintiff must show (1) deprivation of a constitutional
 13 right; (2) the municipality has a policy; (3) the policy amounts to deliberate indifference to a
 14 plaintiff’s constitutional rights; and (4) the policy is the moving force behind the constitutional
 15 violation. *See Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992).

16 A municipality “cannot be held liable *solely* because it employs a tortfeasor—or, in other
 17 words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.”
 18 *Monell*, 436 U.S. at 691 (emphasis in original). Similarly, mere negligence in training employees
 19 cannot support municipal liability; instead, plaintiff must allege facts demonstrating the failure to
 20 train amounts to deliberate indifference to the rights of those who deal with municipal
 21 employees. *City of Canton*, 489 U.S. at 388–89. Finally, a single incident of unconstitutional
 22 action is generally insufficient to state a claim for municipal liability. *Benavidez v. Cnty. of San*
 23 *Diego*, 993 F.3d 1134, 1154 (9th Cir. 2021).

1 Plaintiff has not alleged facts supporting the County's liability under *Monell*. He has not
2 identified a policy that is the moving force behind the constitutional violations alleged in the
3 complaint, and he has not alleged facts establishing that any such policy amounts to deliberate
4 indifference of his constitutional rights. If plaintiff wishes to pursue claims against Pierce
5 County, he must file an amended complaint that corrects these deficiencies.

6 **B. Prosecutorial Immunity**

7 Plaintiff names Sean Plunket, a Pierce County prosecuting attorney, as a defendant in this
8 case. Dkt. 1. Prosecutors are entitled to absolute immunity from liability for damages under §
9 1983. *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976). Prosecutorial immunity protects a
10 prosecutor who "acts within his or her authority and in a quasi-judicial capacity." *Ashleman v.*
11 *Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986) (citing *Imbler*, 424 U.S. at 430-31). "Such immunity
12 applies even if it leaves 'the genuinely wronged defendant without civil redress against a
13 prosecutor whose malicious or dishonest action deprives him of liberty.'" *Id.* (quoting *Imbler*,
14 424 U.S. at 427). As Defendant Plunket is a prosecutor and has immunity, Plaintiff must show
15 cause why this defendant should not be dismissed as a party in this case.

16 **C. Heck Bar**

17 Plaintiff's claims directly challenge the validity of his conviction. Specifically, Plaintiff
18 claims: (1) he received ineffective assistance of counsel in his criminal proceedings (Dkt. 1 at 4–
19 5); and (2) he was denied a fair trial when he was prevented from attending an omnibus hearing
20 in connection with his criminal proceedings (*Id.* at 6). Because these claims challenge the
21 validity of Plaintiff's conviction, they are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

22 A plaintiff may only recover damages under § 1983 for allegedly unconstitutional
23 imprisonment, or for any other harm caused by actions whose unlawfulness would render the
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1 imprisonment invalid, if he can prove the conviction or other basis for confinement has been
2 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
3 authorized to make such a determination, or called into question by a federal court's issuance of a
4 writ of habeas corpus. *Heck*, 512 U.S. at 486–87. A “§ 1983 action is barred (absent prior
5 invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of his
6 suit (state conduct leading to the conviction or internal prison proceedings)—*if* success in that
7 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v.*
8 *Dotson*, 544 U.S. 74, 81–82 (2005) (emphasis in original).

9 Here, Plaintiff's allegations stem from actions taken by counsel and Pierce County
10 relating to his trial and that led to his conviction. Dkt. 1. Plaintiff alleges his rights were violated
11 and he was denied a fair trial. *Id.* Thus, the Court could only grant Plaintiff the relief he seeks by
12 invalidating his underlying conviction.

13 As Plaintiff's allegations amount to an attack on the constitutional validity of his
14 underlying conviction, his claims may not be maintained under § 1983 unless Plaintiff can show
15 the conviction has previously been invalidated. *See Heck*, 512 U.S. at 486–87; *Ramirez v.*
16 *Galaza*, 334 F.3d 850, 855–56 (9th Cir. 2003). Plaintiff does not allege his conviction has been
17 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
18 authorized to make such determination, or called into question by a federal court's issuance of a
19 writ of habeas corpus. As Plaintiff's current conviction has not been reversed and as the validity
20 of the conviction would be called into question if Plaintiff were to prove the facts of this case, his
21 claims are barred by *Heck*. Therefore, Plaintiff must show cause why his ineffectiveness of
22 counsel and due process claims should not be dismissed as *Heck* barred.

III. Instruction to Plaintiff and the Clerk

If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an amended complaint and within the amended complaint, he must write a short, plain statement telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the person who violated the right; (3) exactly what the individual did or failed to do; (4) how the action or inaction of the individual is connected to the violation of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72 (1976).

Plaintiff shall present the amended complaint on the form provided by the Court. The amended complaint must be legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should contain the same case number, and it may not incorporate any part of the original complaint by reference. The amended complaint will act as a complete substitute for the original Complaint, and not as a supplement. Any cause of action alleged in the original complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds*, *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

The Court will screen the amended complaint to determine whether it contains factual allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will not authorize service of the amended complaint on any defendant who is not specifically linked to a violation of Plaintiff's rights.

If Plaintiff fails to file an amended complaint or fails to adequately address the issues raised herein on or before **March 24, 2023**, the undersigned will recommend dismissal of this action pursuant to 28 U.S.C. § 1915.

1 The Clerk is directed to send plaintiff a copy of this Order and the appropriate forms for
2 filing a 42 U.S.C. § 1983 civil rights complaint and for service.

3 Dated this 22nd day of February, 2023.

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6 David W. Christel
7 United States Magistrate Judge
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